IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

WP(C).No. 1310 of 2007

OS.524/1995 of PRL.MUNSIFF COURT,THRISSUR

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PETITIONER:

BALAKRISHNAN,
"MURUKA NIVAS", KORANGATTIL LANE,
THRISSUR.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENTS:

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1. MARY, W/O. LATE OUSEPH @ JOSEPH,
KODANKANDATH HOUSE, MANALUR VILLAGE, THRISSUR.

2. VINCENT, S/O. LATE OUSEPH @ JOSEPH,
KODANKANDATH HOUSE, MANALUR VILLAGE,
THRISSUR.

3. ANTO, S/O. LATE OUSEPH @ JOSEPH,
KODANKANDATH HOUSE, MANALUR VILLAGE,
THRISSUR.

4. PIYUS, S/O. LATE OUSEPH @ JOSEPH,
KODANKANDATH HOUSE, MANALUR VILLAGE,
THRISSUR.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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W.P.(C)NO.1310 OF 2007

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Dated this the 23th day of February 2007

JUDGMENT

The petitioner is the judgment debtor in O.S.524 of 1995. The order impugned is Ext.P2 order passed by the Execution Court which is to the following effect:

> "Rs.2,000/- paid. Repeat Arrest Warrant to respondents - - 28.10.2006."

The above order is dated 1.8.2006. The prayer in this writ petition is to call for the records leading to Ext.P2 order and quash the same.

The case of the petitioner is that no enquiry at all is conducted by the execution court as regards his means and no order is passed entering positive finding to the effect that he is having means when only the court will be justified in ordering personal execution. In view of the ground so urged the petitioner was directed to file affidavit swearing that no enquiry is conducted as regards his means and no order is passed finding that he is a man of means to pay the debt due under the decree. Alternatively it was also directed that if actually an enquiry is conducted and an order is passed to that effect petitioner shall produce certified copy of that

order. Today when the case is taken up, no affidavit is filed by the petitioner. On the other hand counsel for the petitioner submits that some time may be granted to produce certified copy of the order passed by the court below entering into finding that the petitioner is having means though according to the counsel the said finding is not based on any reliable evidence. From the submission it is clear that the allegations made in the writ petition assailing Ext.P2 that the said order was passed without conducting any enquiry as regards means of the petitioner/judgment debtor is far from being a true statement of fact. Further, Ext.P2 order itself shows that earlier also warrant had been ordered and that it is for the failure of the petitioner/judgment debtor in not making substantial payments that arrest warrant was ordered to be repeated. The writ petition brought on the allegation that warrant has been ordered without any enquiry conducted regarding means of the petitioner/judgment debtor in the circumstances deserves to be dismissed and I do so.

K.P.BALACHANDRAN, JUDGE

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